Rev. (1949) Department.

46 SERIES.

G.O. No. 462

Dated 8-4-49

[Despatch Abstract.]

Acts - The Indian Registration Act - Documents - Powers o
Dt. Registrars and Sub Registrars - Amendment - Recorded.

GOVERNMENT OF MADRAS
Revenue Department

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Memo.No.2735 J/47-1, dated 3-1-1948.

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Sub: Acts - The Indian Registration Act - Documents - Powers of District Registrars and Sub-Registrars - Amendment.

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At present Sub-Registrars have power to hold enquiries only into cases of registration of Wills and Authorities to adopt and have no such power in so far as registration of non-testamentary documents are concerned except where they have been specially empowered under the second proviso to section 35 of the Registration Act or where they happen to hold the post of Joint Sub-Registrar in the District Registrar's office. It has been suggested that all Sub-Registrars should have powers to hold enquiries into disputed cases of non-testamentary documents presented for registration. It has further been suggested that in cases both testamentary and non-testamentary, where the value of the subject matter is below Rs.5,000, the power to hold enquiries in respect of documents present for registration should be exercised by all the Sub-Registrars and that in cases where the value is Rs.5,000 and above, only District Registrars and such Sub-Registrars as are specially empowered under the second proviso to section 35 of the Act should exercise that power. The Inspector-General of Registration is requested to consider these suggestions and to offer his views on these at an early date.

Sd. x x
Secy. to Government.

To
The Inspector-General of Registration.

Copy of letter No.83-Genl., dated 1-3-48 from the Inspector General of Registration, Madras to the Secretary to Government, Revenue Department, Madras.

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Sub: Acts - The Indian Registration Act- Documents - Powers of District Registrars and Sub Registrars - Amendment.
Ref: Memo. No.2735-J/47-1, Revenue, dated 3-1-1948.

The suggestion or consideration is to invest all sub-registrars with powers to hold enquiries into disputed cases of non-testamentary documents as well. It is also suggested that in respect of documents both testamentary and non-testamentary wherein the value of the subject matter is below Rs.5,000, the power to hold enquiries should be exercised by all sub registrars and that in cases wherein the value is Rs.5,000 and above, District Registrars and Sub Registrars specially empowered under the second proviso to section 35 of the Indian Registration Act should alone exercise that power. At present, all sub-registrars have power to hold enquiries only into cases of testamentary documents but they have no power whatever to enquire into cases of non-testamentary documents except where they have been specially empowered in that behalf under the second proviso to Section 35 of the Indian Registration Act or where they are Joint Sub Registrars in the Office of the District Registrars. Instead of restricting it to a few sub registrars, the present suggestion is intended to extend to all sub registrars the power to enquire into the factum of execution of non-testamentary documents and to fix a monetary limit for purposes of jurisdiction.

2. The above suggestion, is, perhaps, aimed to secure to to the registering public the advantage of an enquiry being conducted into the factum of execution of their documents by the registering officer of the local area to whom the documents

are presented for registration instead of by the District Registrar and thereby save the parties from the inconvenience and expenditure involved in an appeal to the Registrar of the district.

(i) Primarily, there has been no demand from thepublic for theproposed change in the existing conditionsand no instance of inconvenience felt by them has come up for notice to warrant the suggestion.

(ii) Secondly, it cannot be averred that the parties feel it in-convenient to go to the District Registrar for an enquiry into disputed documents, now that conditions forspeedy transport and other facilities are improving day by day.

(iii) Thirdly, the suggestion is not profitable or less expensive to the parties; for, whether the enquiry is conducted by the sub-registrar of the locality or by the District Registrar, the scale of fees, viz., application fee (Article 16 of the Table of Fees), the process fee etc., (Section 36 of the Indian Registration Act) is the same. Further, the existing system of enquiry by the District Registrar cannot be condemned as excessively expensive when the expenditure incurred by the successful party is awarded as costs under Section 75(4) of the Indian Registration Act and when such costs are recoverable as if they are awarded by a Civil Court. On the other hand, it is probable that an enquiry by a sub registrar is more expensive than an enquiry by the District Registrar. For several sub registry offices are located far from towns in distant villages and out of the way stations where legal talent is not procurable. In keenly contested cases, the parties, will, perforce, have to secure the services of legal practitioners from distant towns at more exorbitant fees, besides batta and conveyance charges than for what they could be secured at the headquarters of the District Registrars. Legal practitioners stationed at towns are prone to be, generally reluctant to attend sub registrar's courts at distant villages foregoing the cases of their clients at their headquarters unless they are attracted by tempting fees which would naturally be more than the normal fee payable at headquarter stations. The fee so paid in excess over the scheduled scale of fees and the other incidental charges paid for their journeys cannot be recovered by the parties as costs.

(iv) The suggestion does not provide for an appeal against the order of refusal passed by a sub registrar in enquiries into disputed documents. Absence of such a provision would amount to withdraw even the existing right of an appeal under Section 72 of the Indian Registration Act which the registering public now enjoy against the orders of refusal passed by a sub registrar in enquiries under section 41 (2) of the Indian Registration Act into disputed documents of testamentary character. At present, under the proviso to Section 35 (3) of the Indian Registration Act, only registering Officers of long service, rank, ripe experience and un-blemished character are empowered to conduct enquiries into disputed documents of non-testamentary nature. An appeal against the orders of refusal passed by such officers was not provided for for the deliberate reason that such a provision was unnecessary having regard to the long service and ripe experience of the officers then proposed to be empowered under the said proviso. The same amount of complacency cannot be conceded while enlarging the scope of enquiry to sub registrars of all grades, irrespective of their length of service, experience and other considerations. It is therefore not safe to dispense with the right of appeal and such a provision is quite essential in the interests of the registering public. If, as suggested, all sub registrars should be empowered generally to hold enquiries into disputed cases of non-testamentary documents as well, it is but necessary that provisions similar to those made in regard to testamentary documents should be made for an appeal against the

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the orders of refusal to register non-testamentary documents passed by sub registrars other than those that have been empowered under the second proviso to Section 35 of the Indian Registration Act and those that hold the post of a joint sub registrar in the office of the District Registrar as a safeguard against miscarriage of justice. The effect of the above provision will only lead to another enquiry, equally expensive before the District Registrar which the present practice does not call for.

(v) Registering officess are primarily inteded for attending to the needs of the registering public who come from far and near. They have to attend to them expeditiously without sacrificing precision in matters relating to stamp duty and registration fees lest Government revenue should be lost. Nowadays, the registering public resent even normal and casual delays in a sub registry office when on account of heavy rush in registrations, the registering officer cannot attend to them quickly. In fact, the registering officer has no time to spare for attending to any business except registration of documents and conduct of searches and the time at his disposal is so limited that he could not attend to any enquiry without causing inconvenience to the registering public at large. The present suggestion will thus cause inconvenience to the registe ing public.

From the foregoing facts, it will be seen that there is no need for the change in the existing system of enquiries as suggested by the Government and that the suggestion, if carried out, will not only cause greater inconvenience to the registering public bot also render the enquiries under the Act more expensive than at present. Thus, the object aimed at by the suggestion will only be frustrated and the registering public at large will not welcome the cahnge. Under the circumstances, I submit that the suggestion may be dropped and the existing procedure allowed to continue.

3. After having dealt with the suggestion in detail in the foregoing paragraphs, I submit that the further suggestion to impose a money limit of Rs.5,000 for empowering all sub registrars to hold enquiries may be shelved with the main suggestion but, however, it is stated that the fixation of the money limit will, far from lessening the inconvenience to the public, add greater hardship to the parties and result in administrative difficulties. The proposal to fix a money limit will take away from the parties the privilege of presenting for enquiry testamentary documents of Rs,5,000 and above to a sub-registrar near at hand as such a document will have to be presented either to the District Registrar or to such sub-registerars as have been empowered in that behalf. In a district there may not be mo e than one or two sub registrars ppecially empowered to enquire into documents of the value of Rs,5,000 and above and even they may be stationed at distant placed far remoted from the parties. In that event, the partees will be put to much inconvenience and hardship besides undue expenditure which they are not put to under the existing conditions. Further, it may so happen that while the enquiry is in progress the sub registrar conducting the enquiry is transferred to another station and his successor may not be one empowered to hold enquiries into documents of the value of Rs.5,000 and above, or it may not be possible to post to the station another person empowered in that behalf. The enquiries, at times, drag on for several months and the parties to the enquiries, will be put to unnecessary delay and annoyance until another officer with powers to hold enquiries of the kind is posted to the station So the fixation of money limit will lead to administrative difficulties which in turn will result in increased hardship and inconvenience to the public.

Your obedient servant,
Sd. x x /Personal Asst. for
I.G.of Regn.

GOVERNMENT OF MADRAS
Abstract.

Acts - The Indian Registration Act - Documents - Powers of District Registrars and Sub Registrars - Amendment - Recorded.

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NOTE FILE.

The I.G.Of Regn. has given convincing reasons why the two proposals mentioned above should be dropped -- see pp. 3-5 c.f. The Govt. may agree with ~~them~~ him and drop the proposals. (Legal have not been the case, but it seems unnecessary to send it now).

Sd. x x/12-2-49. Sd. x x/17-2-49.

S.

H.M.(Fin.) B.G.R./27-2-.
H.M.(Agri) Sd. x x/28-2.

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Revenue Department

TO A.S.

Please see the orders in circulation above. No further action is called for. The papers may be recorded for future reference. The draft order below is for approval.

Sd. x x/7-4-49.

/True copy/

R. Thiagarajan 24-1-54

Office Assistant,
Madras Record Office.

PSR. 15-12253.

PSR 4/54 4/54